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In The

Supreme Court of the United States

October Term 1950

No. 623

HELEN R. LOUGHLIN, et al., *Petitioners*,

v.

FIREMEN'S INSURANCE COMPANY of WASHINGTON and GEORGETOWN in the DISTRICT of COLUMBIA, a *Corporation*.

Brief of Respondent in Opposition to Petition for Writ of Certiorari

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INTRODUCTION

Petitioners state that the questions present are (1) whether or not, in determining whether the evidence is sufficient to submit the case to the jury, the trial court may determine issues that depend on the credibility of a witness; and, assuming that the trial court did such a thing, (2) whether the judgment of the Court of Appeals affirming the trial court did not have an infirmity in that the judgment affirmed was based generally on the finding of the trial court that the principal witness was not entitled to credence.

The basis on which the trial court directed a verdict does not permit the raising of any such questions.

BASIS ON WHICH TRIAL COURT DIRECTED A VERDICT FOR RESPONDENT

While the trial court did say, as to the testimony of Petitioner, LOUGHLIN, who was the principal witness for Petitioners, that—

> "Her testimony was most unsatisfactory. If she did not intend to mislead, she certainly was a discreditable witness * * * The Court holds she was not a credible witness and her testimony is not entitled to much credence * * *" (R. 66A)

The Court did not take the case away from the jury because of this, but directed a verdict on the following grounds which were not in any wise concerned with the credibility of any witness, but which pertained to completely undisputed testimony—

1. False swearing on the proof of loss that there had been no change in the use, occupancy or exposure of the insured property—the evidence being uncontradicted that the property had been allowed to become a fire hazard (R. 68A, 75A).

2. Undisputed evidence that Petitioners failed to comply with the demand of the Respondent insurance company, made agreeably to the terms of the policy, to submit to examination under oath and produce certain records (R. 69A), notwithstanding another valid provision of the policy which makes compliance with such demand a condition precedent to suit.

3. That a contract of fire insurance is primarily one of indemnity and that Petitioners had shown no loss for which they were entitled to be indemnified by the Respondent (R. 74A).

The United States Court of Appeals for the District of Columbia rendered a very short and concise opinion, which in its entirety reads as follows:

> "This appeal is from a judgment for defendant (appellee) in a suit on a fire insurance policy. At con-

clusion of all evidence the trial court directed a verdict for the insurance carrier upon several grounds, including the undisputed fact that assured (appellant) failed to comply with the demand of the carrier, made agreeably to terms of the policy, to submit to examination under oath and produce certain records. Uncontradicted evidence leaves no doubt that the requirement of the policy was knowingly and intentionally violated without reasonable justification or excuse, notwithstanding another valid provision which made compliance a condition precedent to suit. Cf. Roberto v. Hartford Fire Ins. Co., 177 F. 2d 811 (7th Cir. 1949); American Macaroni Mfg. Co. v. Niagara Fire Ins. Co., 164 F. 2d 878 (5th Cir. 1947); Gipps Brewing Corp. v. Central Mfrs' Mutual Ins. Co., 147 F. 2d 6 (7th Cir. 1945); Merchant's Ins. Co. v. Lilgeomont, 84 F. 2d 685 (5th Cir. 1936). In our opinion the verdict was properly directed upon this ground. We need not deal with other grounds upon which the court acted."

CONCLUSION

On the basis of the foregoing alone and without any extended citation of authority, there is no basis for the review which is sought in this case.

Respectfully submitted,

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